F. M. S.

[ORIGINAL CIVIL JURISDICTION]

PRICHARD, J.

January 24, 1934.

CHETTINAD BANK, LTD. OF KUALA LUMPUR..... Plaintiffs.

vs.

SIVAGAMIPPILLAY (f) Administratrix of the Estate of Kana Ponnampalan deceased .....Defendant.

[SELANGOR CIVIL SUIT No. 305 of 1933]

Contract Enactment, Ss. 69 and 70—obligations quasi ex contractu—*reimbursement of person paying money due by another.*

K.P. deceased was the registered owner of an undivided one half interest in certain lands in Kuala Lumpur and P.S. the Administratrix of the Estate of K.P. deceased was the registered owner of the other half. P.S. in her personal capacity charged her interest in the lands in favour of the plaintiff Company. K.P. deceased and P.S. had failed to pay the annual quit rent and rates due in respect of the lands. In order to avoid seizure being levied on the lands for non-payment of quit rent and rates the plaintiff Company duly paid the whole amount due. The plaintiff claimed to be reimbursed from the Estate of K.P. deceased with half the amount paid for the annual quit rent, rates, etc.

Held, that the plaintiff Company was entitled to recover, the case being one that fell within sections 69 and 70 of the Contract Enactment.

Veerasamy for the Plaintiffs.

Hastings for the Defendant.

Cur. Adv. Vult.

PRICHARD, J.—The Plaintiffs are a Chetty firm and the Defendant the administratrix of the Estate of Kana Ponnampalam, deceased, and is sued as such.

In April, 1930, Sivagamippillay, in her personal capacity, charged her half interest in certain lands to the Plaintiffs, Kana Ponnampalam, deceased, held the other half share. The party sued is the representative of the Estate of Kana Ponnampalam, deceased.

Kana Ponnampalam deceased and Sivagamippillay had failed to pay (1) the annual quit-rent due to the Collector of Land Revenue, Kuala Lumpur, in respect of the lands for the years 1931, 1932 and 1933 and (2) the General Assessment, Water and Education Fees due to the Sanitary Board Kuala Lumpur for the years 1930, 1931, 1932 and 1933. In order to prevent the lands from being sold the Plaintiffs paid the respective authorities the full amounts due amounting to $2,319.05. They now claim from the Defendant half the amount, i.e. $1,159 and some cents.

It appeared that on 19th October, 1931, the Land Office served on the Plaintiffs notices of sale for the recovery of rent due for 1931. On 14th November, 1931 the Plaintiffs took proceedings to sell the half interest in the lands charged. On the 14th December, 1931, the Court made an order for sale and the sale eventually took place on the 22nd day of July, 1933, the Plaintiffs being the purchasers.

On the 1st July, 1932 Sivagamippillay, the chargor, was adjudicated bankrupt. It is agreed that for the purposes of the present case this fact is immaterial.

The Plaintiffs' manager proved that the quit-rent for 1931 not having been paid they received notices from the Land Office. He went to the Land Office and, as he was Chargee of half the interest in the lands, he offered to pay half the amount of the quit-rent. This was refused and he was told that if he did not pay the whole the lands would be sold. He accordingly paid. Under similar circumstances he paid the quit-rent for 1932 and 1933.

In the same way he was told by the Sanitary Board bailiff that if he did not pay the whole amount due for General Assessment, Water and Education Fees. the Board would sell the property. I believed the evidence of the Plaintiff's manager even though it differed to some extent from that of the bailiff. In any case, the important point is that the Plaintiffs paid because of a threat of sale for non-payment.

The law which governs a case of this kind is contained in sections 69 and 70 of the Contract Enactment which are copies from sections 69 and 70 of the Indian Contract Act (Act IX of 1872).

Section 69 says:—

> "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other."

Section 70 says:—

> "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered"

In India there have been a very large number of decisions dealing with sections 69 and 70. As regards section 69, it was said in *Mt. Munni Bibi* v. *Tirloki Nath*, A.I.R. 1932 Allahabad 332 at page 333.

> "There are numerous cases including a decision of their Lordships of the Privy Council in which it has been held in effect

the words 'a person who is interested' do not mean that the person who makes the payment must prove that he had such an interest as would stand the test of a judicial trial. The decisions point to the conclusion that all that is necessary for a person making a payment to recover is that he should really believe and honestly believe that he must make the payment in his own interest."

Among the numerous cases reference may be made to *Smith* v. *Dinonath Mookerjee*, I.L.R. 12 Calc. 213—see page 216; *Kedar Nath Mistri* v. *Narayan Chandra Safui*, A.I.R. 1930 Calc. page 344—see page 345 and generally *Pollock & Mulla* —Indian Contract and Specific Relief Acts.—6th Edn. pages 382 to 400.

During the course of the hearing Mr. Hastings for the Defendant admitted judgment must go against him as far as the claim for repayment of half the quit-rent was concerned, in view of section 46 of the Land Code which says:—

> "When land is held by co-proprietors they shall be jointly and severally liable to pay the rent reserved."

There is a similar clause in the Sanitary Boards Enactment which covers the General Assessment, Water and Education Fees, viz. section 45. This provides that:—

> "Subject to the provisions of the Land Code, 1926, the rate shall be a first charge on the holding in respect of which it is assessed and if not paid within the prescribed time shall be recoverable in the manner hereinafter provided."

I hold, therefore, that the present case can fall under either section 69 or section 70 and that Plaintiffs are entitled to recover the amount claimed subject to a correction of an error in the amount of the cents, which is not 57½. The correct amount is the half of $2,319.05, i.e. $1,159.51 and costs.

Judgment accordingly.

[APPELLATE CIVIL JURISDICTION]
THOMAS, C.J., BURTON & HOWES, JJ.
March 1, 1934.

FOO NYIT TSE.....Plaintiff—Appellant.

and

YEW CHEE SEONG Defendant—Respondent.

and

FOO YIN FONG.....Applicant.

[PERAK CIVIL APPEAL No. 13 of 1933]

Death of Appellant—Order of Revivor.

The Plaintiff gave notice of appeal from the Judgment of Mudie,J.

Before the memorandum of appeal was filed he died. The Will named the Applicant and Foo Yin Chiew as Executors. There was insufficient time to prove the Will and extract probate before the date for filing the memorandum of appeal. The Applicant applied for an order that the proceedings in the Appeal might be carried on and prosecuted by the Applicant and Foo Yin Chiew as personal representatives of the deceased in like manner as such proceedings might have been carried on and prosecuted by the deceased plaintiff-appellant if he had not died, and for an order substituting the names of the Executors in place of that of the deceased plaintiff-appellant and amending the proceedings accordingly.

Application was made for extending the time for filing the memorandum of appeal accordingly.

Held, that the Court was empowered to make an order of Revivor in terms of the application.

H. D. Mundell and *S. Seenivasagam* for Appellant.

T. E. Conaghan and *Dunford Wood* for Respondent.

THOMAS, C.J. gave oral judgment accordingly, **BURTON** and **HOWES, JJ.** concurring.